



April 6, 1999

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## ENGROSSED SENATE BILL No. 91

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DIGEST OF SB 91 (Updated March 30, 1999 4:34 pm - DI 58)

**Citations Affected:** IC 12-10; IC 12-15.

**Synopsis:** Medicaid eligibility. Provides that an irrevocable trust, an irrevocable prepaid funeral agreement, or a life insurance policy that provides money for the burial of an individual may not be considered as a resource in determining the individual's eligibility for Medicaid if the value of the irrevocable trust, irrevocable prepaid funeral arrangement, or life insurance policy does not exceed \$10,000. (Current law exempts these instruments from consideration as a resource in determining an individual's eligibility for Medicaid if the value of the instrument does not exceed \$1,400.) Provides for a \$50 personal needs allowance.

**Effective:** July 1, 1999.

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### Riegsecker

(HOUSE SPONSORS — HASLER, ULMER, CRAYCRAFT, SMITH,  
MILLER)

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January 6, 1999, read first time and referred to Committee on Health and Provider Services.  
February 9, 1999, reported favorably — Do Pass.  
February 15, 1999, read second time, ordered engrossed. Engrossed.  
February 16, 1999, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

March 3, 1999, read first time and referred to Committee on Ways and Means.  
April 5, 1999, amended, reported — Do Pass.

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ES 91—LS 6208/DI 88+



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April 6, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

## ENGROSSED SENATE BILL No. 91

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A BILL FOR AN ACT to amend the Indiana Code concerning human services.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1       SECTION 1. IC 12-10-6-1 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) An individual  
3       who:  
4           (1) is at least sixty-five (65) years of age, blind, or disabled; and  
5           (2) is a resident of a county home;  
6       is eligible to receive assistance payments from the state if the  
7       individual would be eligible for assistance under the federal  
8       Supplemental Security Income program except for the fact that the  
9       individual is residing in a county home.  
10       (b) The amount of nonmedical assistance to be paid on behalf of a  
11       resident in a county home must be based on the daily rate established  
12       by the division. The rate for facilities under this section and licensed  
13       under IC 16-28 may not exceed an upper rate limit established by a rule  
14       adopted by the division.  
15       (c) The rate for facilities under this section but not licensed under  
16       IC 16-28 must be the lesser of:

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(1) an upper rate limit established by a rule adopted by the division; or

(2) a reasonable and adequate rate to meet the costs, determined by generally accepted accounting principles, that are incurred by efficiently and economically operated facilities in order to provide care and services in conformity with quality and safety standards and applicable laws and rules.

(d) The recipient shall be paid or allowed to retain from the recipient's income a **monthly** personal allowance. ~~in an amount to be established by the division.~~ The amount:

~~(1) may be not less than twenty-eight dollars and fifty cents (\$28.50) and not more than thirty-five dollars (\$35) monthly; is~~  
**fifty dollars (\$50);**

(2) is exempt from income eligibility consideration by the division; and

(3) may be exclusively used by the recipient for personal needs.

(e) In addition to the amount that may be retained as a personal allowance under this section, an individual is allowed to retain an amount equal to the individual's state and local income tax liability. The amount that may be retained during a month may not exceed one-third (1/3) of the individual's state and local income tax liability for the calendar quarter in which the month occurs. This amount is exempt from income eligibility consideration by the division. The amount retained shall be used by the individual to pay state or local income taxes owed.

(f) The division of disability, aging, and rehabilitative services, in cooperation with the state department of health taking into account licensure requirements under IC 16-28, shall adopt rules under IC 4-22-2 governing the reimbursement to facilities under this section. The rules must be designed to determine the costs that must be incurred by efficiently and economically operated facilities to provide room, board, laundry, and other services, along with minimal administrative direction to individuals who receive residential care in the facilities under this section. A rule adopted under this subsection by:

(1) the division; or

(2) the state department of health;

must conform to the rules for residential care facilities that are licensed under IC 16-28.

(g) A rate established under this section may be appealed according to the procedures under IC 4-21.5.

(h) The division shall annually review each facility's rate using the following:

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(1) Generally accepted accounting principles.

(2) The costs incurred by efficiently and economically operated facilities in order to provide care and services in conformity with quality and safety standards and applicable laws and rules.

SECTION 2. IC 12-10-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) An individual who is incapable of residing in the individual's own home may apply for residential care assistance under this section. The determination of eligibility for residential care assistance is the responsibility of the division. Except as provided in subsections (f) and (h), an individual is eligible for residential care assistance if the division determines that the individual:

(1) is a recipient of Medicaid or the federal Supplemental Security Income program;

(2) is incapable of residing in the individual's own home because of dementia, mental illness, or a physical disability;

(3) requires a degree of care less than that provided by a health care facility licensed under IC 16-28; and

(4) can be adequately cared for in a residential care setting.

(b) Individuals suffering from mental retardation may not be admitted to a home or facility that provides residential care under this section.

(c) A service coordinator employed by the division may:

(1) evaluate a person seeking admission to a home or facility under subsection (a); or

(2) evaluate a person who has been admitted to a home or facility under subsection (a), including a review of the existing evaluations in the person's record at the home or facility.

If the service coordinator determines the person evaluated under this subsection is mentally retarded, the service coordinator may recommend an alternative placement for the person.

(d) Except as provided in section 5 of this chapter, residential care consists of only room, board, and laundry, along with minimal administrative direction. State financial assistance may be provided for such care in a boarding or residential home of the applicant's choosing that is licensed under IC 16-28 or a Christian Science facility listed and certified by the Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc., that meets certain life safety standards considered necessary by the state fire marshal. Payment for such care shall be made to the provider of the care according to division directives and supervision. The amount of nonmedical assistance to be paid on behalf of a recipient living in a boarding home,



1 residential home, or Christian Science facility shall be based on the  
 2 daily rate established by the division. The rate for facilities that are  
 3 referred to in this section and licensed under IC 16-28 may not exceed  
 4 an upper rate limit established by a rule adopted by the division. The  
 5 recipient may retain from the recipient's income a **monthly** personal  
 6 allowance ~~in an amount to be established by the division but not less~~  
 7 ~~than twenty-eight dollars and fifty cents (\$28.50) or more than~~  
 8 ~~thirty-five dollars (\$35) monthly. of fifty dollars (\$50).~~ This amount  
 9 is exempt from income eligibility consideration by the division and  
 10 may be exclusively used by the recipient for the recipient's personal  
 11 needs. However, if the recipient's income is less than the amount of the  
 12 personal allowance, the division shall pay to the recipient the  
 13 difference between the amount of the personal allowance and the  
 14 recipient's income. A reserve or an accumulated balance from such a  
 15 source, together with other sources, may not be allowed to exceed the  
 16 state's resource allowance allowed for adults eligible for state  
 17 supplemental assistance or Medicaid as established by the rules of the  
 18 office of Medicaid policy and planning.

19 (e) In addition to the amount that may be retained as a personal  
 20 allowance under this section, an individual shall be allowed to retain  
 21 an amount equal to the individual's state and local income tax liability.  
 22 The amount that may be retained during a month may not exceed  
 23 one-third (1/3) of the individual's state and local income tax liability for  
 24 the calendar quarter in which that month occurs. This amount is  
 25 exempt from income eligibility consideration by the division. The  
 26 amount retained shall be used by the individual to pay any state or local  
 27 income taxes owed.

28 (f) The rate of payment to the provider shall be determined in  
 29 accordance with a prospective prenegotiated payment rate predicated  
 30 on a reasonable cost related basis, with a growth of profit factor, as  
 31 determined in accordance with generally accepted accounting  
 32 principles and methods, and written standards and criteria, as  
 33 established by the division. The division shall establish an  
 34 administrative appeal procedure to be followed if rate disagreement  
 35 occurs if the provider can demonstrate to the division the necessity of  
 36 costs in excess of the allowed or authorized fee for the specific  
 37 boarding or residential home. The amount may not exceed the  
 38 maximum established under subsection (d).

39 (g) The personal allowance for one (1) month for an individual  
 40 described in subsection (a) whose employment is part of the  
 41 individual's personal habilitation plan or who is working in a sheltered  
 42 workshop or day activity center is the amount that an individual would



be entitled to retain under subsection (d) plus an amount equal to one-half (1/2) of the remainder of:

- (1) gross earned income for that month; minus
- (2) the sum of:
  - (A) sixteen dollars (\$16); plus
  - (B) the amount withheld from the person's paycheck for that month for payment of state income tax, federal income tax, and the tax prescribed by the federal Insurance Contribution Act (26 U.S.C. 3101 et seq.); plus
  - (C) transportation expenses for that month.

(h) An individual who, before September 1, 1983, has been admitted to a home or facility that provides residential care under this section is eligible for residential care in the home or facility.

(i) The director of the division may contract with the division of mental health or the division of disability, aging, and rehabilitative services to purchase services for individuals suffering from mental illness or a developmental disability by providing money to supplement the appropriation for community residential care programs established under IC 12-22-2 or community residential programs established under IC 12-11-1-1.

(j) A person with a mental illness may not be placed in a Christian Science facility listed and certified by the Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc., unless the facility is licensed under IC 16-28.

SECTION 3. IC 12-15-2-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 17. (a) Except as provided in subsection (b), if an applicant for or a recipient of Medicaid:

- (1) establishes one (1) irrevocable trust that has a value of not more than ~~one ten thousand four hundred~~ dollars ~~(\$1,400);~~ **(\$10,000)**, exclusive of interest, and is established for the sole purpose of providing money for the burial of the applicant or recipient;
  - (2) enters into an irrevocable prepaid funeral agreement having a value of not more than ~~one ten thousand four hundred~~ dollars ~~(\$1,400);~~ **(\$10,000)**; or
  - (3) owns a life insurance policy with a face value of not more than ~~one ten thousand four hundred~~ dollars ~~(\$1,400);~~ **(\$10,000)** and with respect to which provision is made to pay not more than ~~one ten thousand four hundred~~ dollars ~~(\$1,400)~~ **(\$10,000)** toward the applicant's or recipient's funeral expenses;
- the value of the trust, prepaid funeral agreement, or life insurance



1 policy may not be considered as a resource in determining the  
2 applicant's or recipient's eligibility for Medicaid.

3 (b) If an applicant for or a recipient of Medicaid establishes an  
4 irrevocable trust or escrow under IC 30-2-13, the entire value of the  
5 trust or escrow may not be considered as a resource in determining the  
6 applicant's or recipient's eligibility for Medicaid.

7 (c) If an applicant for or a recipient of Medicaid owns resources  
8 described in subsection (a) and the total value of those resources is  
9 more than ~~one ten thousand four hundred~~ dollars ~~(\$1,400)~~, **(\$10,000)**,  
10 the value of those resources that is more than ~~one ten thousand four~~  
11 ~~hundred~~ dollars ~~(\$1,400)~~ **(\$10,000)** may be considered as a resource in  
12 determining the applicant's or recipient's eligibility for Medicaid.

13 SECTION 4. IC 12-15-7-2 IS AMENDED TO READ AS  
14 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. ~~Not less than~~  
15 ~~twenty-eight dollars and fifty cents (\$28.50) or more than thirty-five~~  
16 ~~dollars (\$35)~~ **Fifty dollars (\$50)** monthly may be exempt from income  
17 eligibility consideration.

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## COMMITTEE REPORT

Mr. President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 91, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 91 as introduced.)

MILLER, Chairperson

Committee Vote: Yeas 8, Nays 0.

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ES 91—LS 6208/DI 88+





## COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred Senate Bill 91, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 12-10-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) An individual who:

- (1) is at least sixty-five (65) years of age, blind, or disabled; and
- (2) is a resident of a county home;

is eligible to receive assistance payments from the state if the individual would be eligible for assistance under the federal Supplemental Security Income program except for the fact that the individual is residing in a county home.

(b) The amount of nonmedical assistance to be paid on behalf of a resident in a county home must be based on the daily rate established by the division. The rate for facilities under this section and licensed under IC 16-28 may not exceed an upper rate limit established by a rule adopted by the division.

(c) The rate for facilities under this section but not licensed under IC 16-28 must be the lesser of:

- (1) an upper rate limit established by a rule adopted by the division; or
- (2) a reasonable and adequate rate to meet the costs, determined by generally accepted accounting principles, that are incurred by efficiently and economically operated facilities in order to provide care and services in conformity with quality and safety standards and applicable laws and rules.

(d) The recipient shall be paid or allowed to retain from the recipient's income a **monthly** personal allowance. ~~in an amount to be established by the division.~~ The amount:

- (1) ~~may be not less than twenty-eight dollars and fifty cents (\$28.50) and not more than thirty-five dollars (\$35) monthly; is~~ **fifty dollars (\$50);**
- (2) is exempt from income eligibility consideration by the division; and
- (3) may be exclusively used by the recipient for personal needs.

(e) In addition to the amount that may be retained as a personal allowance under this section, an individual is allowed to retain an amount equal to the individual's state and local income tax liability.

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The amount that may be retained during a month may not exceed one-third (1/3) of the individual's state and local income tax liability for the calendar quarter in which the month occurs. This amount is exempt from income eligibility consideration by the division. The amount retained shall be used by the individual to pay state or local income taxes owed.

(f) The division of disability, aging, and rehabilitative services, in cooperation with the state department of health taking into account licensure requirements under IC 16-28, shall adopt rules under IC 4-22-2 governing the reimbursement to facilities under this section. The rules must be designed to determine the costs that must be incurred by efficiently and economically operated facilities to provide room, board, laundry, and other services, along with minimal administrative direction to individuals who receive residential care in the facilities under this section. A rule adopted under this subsection by:

- (1) the division; or
- (2) the state department of health;

must conform to the rules for residential care facilities that are licensed under IC 16-28.

(g) A rate established under this section may be appealed according to the procedures under IC 4-21.5.

(h) The division shall annually review each facility's rate using the following:

- (1) Generally accepted accounting principles.
- (2) The costs incurred by efficiently and economically operated facilities in order to provide care and services in conformity with quality and safety standards and applicable laws and rules.

**SECTION 2. IC 12-10-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:** Sec. 2. (a) An individual who is incapable of residing in the individual's own home may apply for residential care assistance under this section. The determination of eligibility for residential care assistance is the responsibility of the division. Except as provided in subsections (f) and (h), an individual is eligible for residential care assistance if the division determines that the individual:

- (1) is a recipient of Medicaid or the federal Supplemental Security Income program;
- (2) is incapable of residing in the individual's own home because of dementia, mental illness, or a physical disability;
- (3) requires a degree of care less than that provided by a health care facility licensed under IC 16-28; and
- (4) can be adequately cared for in a residential care setting.



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(b) Individuals suffering from mental retardation may not be admitted to a home or facility that provides residential care under this section.

(c) A service coordinator employed by the division may:

- (1) evaluate a person seeking admission to a home or facility under subsection (a); or
- (2) evaluate a person who has been admitted to a home or facility under subsection (a), including a review of the existing evaluations in the person's record at the home or facility.

If the service coordinator determines the person evaluated under this subsection is mentally retarded, the service coordinator may recommend an alternative placement for the person.

(d) Except as provided in section 5 of this chapter, residential care consists of only room, board, and laundry, along with minimal administrative direction. State financial assistance may be provided for such care in a boarding or residential home of the applicant's choosing that is licensed under IC 16-28 or a Christian Science facility listed and certified by the Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc., that meets certain life safety standards considered necessary by the state fire marshal. Payment for such care shall be made to the provider of the care according to division directives and supervision. The amount of nonmedical assistance to be paid on behalf of a recipient living in a boarding home, residential home, or Christian Science facility shall be based on the daily rate established by the division. The rate for facilities that are referred to in this section and licensed under IC 16-28 may not exceed an upper rate limit established by a rule adopted by the division. The recipient may retain from the recipient's income a **monthly** personal allowance ~~in an amount to be established by the division but not less than twenty-eight dollars and fifty cents (\$28.50) or more than thirty-five dollars (\$35) monthly.~~ **of fifty dollars (\$50).** This amount is exempt from income eligibility consideration by the division and may be exclusively used by the recipient for the recipient's personal needs. However, if the recipient's income is less than the amount of the personal allowance, the division shall pay to the recipient the difference between the amount of the personal allowance and the recipient's income. A reserve or an accumulated balance from such a source, together with other sources, may not be allowed to exceed the state's resource allowance allowed for adults eligible for state supplemental assistance or Medicaid as established by the rules of the office of Medicaid policy and planning.

(e) In addition to the amount that may be retained as a personal



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allowance under this section, an individual shall be allowed to retain an amount equal to the individual's state and local income tax liability. The amount that may be retained during a month may not exceed one-third ( $1/3$ ) of the individual's state and local income tax liability for the calendar quarter in which that month occurs. This amount is exempt from income eligibility consideration by the division. The amount retained shall be used by the individual to pay any state or local income taxes owed.

(f) The rate of payment to the provider shall be determined in accordance with a prospective prenegotiated payment rate predicated on a reasonable cost related basis, with a growth of profit factor, as determined in accordance with generally accepted accounting principles and methods, and written standards and criteria, as established by the division. The division shall establish an administrative appeal procedure to be followed if rate disagreement occurs if the provider can demonstrate to the division the necessity of costs in excess of the allowed or authorized fee for the specific boarding or residential home. The amount may not exceed the maximum established under subsection (d).

(g) The personal allowance for one (1) month for an individual described in subsection (a) whose employment is part of the individual's personal habilitation plan or who is working in a sheltered workshop or day activity center is the amount that an individual would be entitled to retain under subsection (d) plus an amount equal to one-half ( $1/2$ ) of the remainder of:

- (1) gross earned income for that month; minus
- (2) the sum of:
  - (A) sixteen dollars (\$16); plus
  - (B) the amount withheld from the person's paycheck for that month for payment of state income tax, federal income tax, and the tax prescribed by the federal Insurance Contribution Act (26 U.S.C. 3101 et seq.); plus
  - (C) transportation expenses for that month.

(h) An individual who, before September 1, 1983, has been admitted to a home or facility that provides residential care under this section is eligible for residential care in the home or facility.

(i) The director of the division may contract with the division of mental health or the division of disability, aging, and rehabilitative services to purchase services for individuals suffering from mental illness or a developmental disability by providing money to supplement the appropriation for community residential care programs established under IC 12-22-2 or community residential programs established under



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IC 12-11-1-1.

(j) A person with a mental illness may not be placed in a Christian Science facility listed and certified by the Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc., unless the facility is licensed under IC 16-28."

Page 2, after line 13, begin a new paragraph and insert:

"SECTION 4. IC 12-15-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. ~~Not less than twenty-eight dollars and fifty cents (\$28.50) or more than thirty-five dollars (\$35)~~ **Fifty dollars (\$50)** monthly may be exempt from income eligibility consideration."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 91 as printed February 10, 1999.)

BAUER, Chair

Committee Vote: yeas 25, nays 0.

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